IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of Case

Criminal Appeal No. 977 of 2001 **Decided on: October 13, 2006**
(Old No. 250 of 1983)

A.F.R. (Approved for Reporting)
Not approved for reporting

Date. 13.10.2006

(Initials of Judge)

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 977 of 2001
(Old No. 250 of 1983)

1. Ram Chandra (Since deceased)
2. Ghanshyam

Both S/o Narayan Dutt,
R/o Village Lankhi,
Patti patwari Circle Ghat,
Tehsil Chamoli, District Chamoli.

……. Appellants

Versus

The State …… Respondent

Ms. R.P. Nautiyal, learned counsel for the appellant Ghanshyam.
Mr. Rajeev Mohan Birkhani, Brief Holder for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal procedure, 1973 (for brevity hereinafter Cr. P.C.), is directed against the judgment and order dated 21.12.1982, passed by learned Sessions Judge, Chamoli, in Sessions Trail No. 19 of 1982, whereby appellants Ram Chandra and Ghanshyam have been convicted under Section 307 read with Section 34 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and each one of them is sentenced to undergo rigorous imprisonment for a period of four years.

2) Heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that appellant Ram Chandra and Ghanshyam are brothers, who are resident of village Lankhi, Patwari Circle Ghat, Tehsil and District Chamoli. Their cousin P.W. 3 Govind Ram (injured) was earlier in the service of the armed forces and his land used to be cultivated by the appellants. When he returned back to his village, (probably after retirement) a dispute arose between the cousins relating to occupation of the land and they indulged in proceedings under Section 107 /116 of Cr.P.C., in the year 1979. Later, Govind Ram became Surpanch (Head man) of the Van Panchayat in the year 1980, and he got challaned both the appellants under Section 4 / 5 of the U.P. Public Premises (Eviction of unauthorized occupants) Act, 1972. On 09.07.1982, Govind Ram appeared as witness against both the appellants, in said proceedings. On the next day i.e. 10.07.1982, P.W. 3 Govind Ram had an upset stomach and he went to ease out, at about 1:15 P.M., from his village towards Myakot Toke. Meanwhile, both the appellants reached there and appellant Ghanshyam threw a stone at Govind Ram, while appellant Ram Chandra struck him with a 'THAMALI' (a heavy sharp edged weapon like Sickle). Resultantly, Govind Ram fell down and got unconscious. At that point of time, P.W. 5 Bhaduli Devi was working in a nearby field and rushed to the spot, on hearing alarm raised by Govind Ram. She saw injured bleeding profusely and appellants Ghanshyam and Ram Chandra running away from the place of occurrence. She

also raised alarm on which P.W. 4 Khilaph Singh (informant) and one Shiv Singh also reached there. P.W. 4 Khilaph Singh got lodged the First Information Report (Ext A –8) on 11.07.1982, with Patwari Ghat, (In Uttaranchal hills, in certain areas, revenue officers are given police powers). Before that he took injured Govind Ram to District Hospital at Gopeshwar and got him admitted there, at about 9:25 P.M., on the previous day i.e. 10.07.1982. The crime was investigated by P.W. 7 Sureshanand Dhondiyal, Patwari, who interrogated the witnesses, prepared site plan (Ext. A –14) and got sent the blood stained clothes, after taking into possession, to the chemical examiner. On completion of the investigation, the Investigating Officer submitted charge sheet, against both the accused / appellants fro their trial for allegedly committing offence punishable under Section 307 / 34 of I.P.C.

4) On receipt of the charge sheet, it appears that the Chief Judicial Magistrate concerned, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trail. Learned Sessions Judge, after hearing the prosecution and the defence framed charge of offence punishable under Section 307 / 34 of I.P.C., against both the accused Ram Chandra and Ghanshyam, who pleaded not guilty, and claimed to be tried. On this prosecution got examined P.W. 1 Dr. D.N. Pauriyal (who medically examined the injured); P.W. 2 Dr. D.C. Awasthi (who X-rayed the injuries on the person of the injured); P.W. 3

Govind Ram (injured eyewitness); P.W. 4 Khilaph Singh (informant); P.W. 5 Bhaduli Devi (eyewitness); P.W. 6 Lachcham Singh (witness of recovery of THAMALI) and P.W. 7 Sureshanand Dhondiyal (Investigating Officer).

5) All oral and documentary evidence was put to the accused persons by the trail court under Section 313 of the Cr.P.C., regarding which they alleged that the same is false and they have been falsely implicated in the crime, due to enmity. No evidence in defence appears to have been adduced by the defence. After hearing the parties, the trail court found both the accused guilty of offence punishable under Section 307 / 34 of I.P.C., and after hearing him on sentence, sentenced each one of them to rigorous imprisonment for a period of four years. Aggrieved by said judgment and order dated 21.12.1982, both the convicts preferred this appeal before Allahabad High court in the year 1983, from where the same is received by this Court by way of transfer, under section 35 of the U.P. Re-organization Act, 2000, for its disposal.

6) Before further discussions, it is pertinent to mention here, the injuries found on the person of Govind Ram, recorded per Ext. A –1, by P.W. 1 Dr. D.N. Pauriyal, at about 9:30 P.M., on the day of incident i.e. 10.07.1982. Following injuries were found on the person of the injured:

(i) ***Lacerated wound 3 cm X 0.5 cm X bone deep on left parietal prominence.***

(ii) ***Lacerated wound 4 cm X 0.5 cm X bone deep on the top of head.***

(iii) ***Incised wound 10 cm X 3 cm X muscle deep on upper part of left side of neck, 2 cm below left lobule of ear. The wound was transversely situated. The margins were even, clean cut, well defined and inverted.***

(iv) ***Incised wound 3 cm X 1.5 cm X bone deep on the terminal phalanx of right middle finger, palmer aspect.***

(v) ***Incised wound 2.5 cm X 1 cm X bone deep on the terminal phalanx of right ring finger, palmer aspect.***

(vi) ***Incised wound 5 cm X 1 cm X bone deep on the front of the upper third of right leg 6 cm below right knee joint. Wound was transverse and underneath bone was partly cut, transversely.***

(vii) ***Lacerated wound 1.5 cm X 1 cm X muscle deep, on the upper third of left leg, on the front and slightly lateral 13 cm below left knee joint.***

(viii) ***Incised wound 2 cm X 0.5 cm X skin deep on the middle third of right leg 10 cm below knee joint.***

(ix) ***Contusion 10 cm X 6 cm on right side of back over scapula.***

(x) ***Abrasions in an area of 12 cm X 8 cm left side back in the middle.***

(xi) ***Contusion 12 cm X 10 cm on the back of right forearm in the middle third. There was suspected fracture of underneath bone.***

(xii) ***Contusion over right side of chest 8 cm X 6 cm over the right fifth, sixth and seventh ribs, 8 cm away from the middle of the sternum.***

7) P.W. 3 Govind Ram, injured, has stated on oath before that trial court, that on the day of incident in the noon at about 1:15 P.M., he had gone to Myakot Tok to easy himself out, as his stomach was upset that day. When he was about of sit both the appellants Ra Chandra and Ghanshyam came there. Ghanshayam threw a stone at Govind Ram and appellant Ram Chandra, armed with a THAMALI (Ext.1), gave a blow on his person with its. The witness further states that he fell down and got unconscious. The statement of this witness not only gets corroboration by the above mentioned injuries recorded by P.W. 1 Dr. D.N. Pauriyal, but also from the statement of P.W. 5 Bhaduli, who was working in a nearby field at that point of time, and immediately rushed to the spot on hearing alarm raised by Govind Ram. This witness states that she saw accused / appellant Ghanshyam and Ram Chandra running away from the place of incident. She further states that Ram Chandra was armed with 'THAMALI' (Ext. –1), a heavy sharp edged Sickle. Soon after the incident, P.W. 4 Khilaph Singh reached there on hearing further alarm raised by Bhaduli, who took the injured to the Hospital at Gopeshwar and, thereafter, on the next day lodged the First Information Report with Patwari Ghat. From the evidence of these witnesses read with medical injury report, in the opinion of this Court, the prosecution has been successful in proving the charge as

against appellant No. 1 Ram Chandra. (Appeal filed by appellant No. 1 Ram Chandra already stood abated vide order of this Court dated 19.08.2006, as he died on 06.06.2006, during the pendency of this appeal).

8) However, as far as appellant No. 2 Ghanshyam is concerned, his role in commission of crime is only that of hitting a stone from a distance. To constitute and offence punishable under Section 307 read with Section 34 of I.P.C., the prosecution has to show that Ghanshyam had a common intention with Ram Chandra to commit the murder of Govind Ram. From the evidence adduced by the witnesses, it is clear that due to the upset stomach, it so happened that Govind Ram has to go to ease out towards Myakot Tok. It cannot be said that the accused / appellants knew this fact and planned to commit murder of Govind Ram. Though, a common intention can be formed at the spot also but it has nowhere come on the record, if Ghanshyam asked Ram Chandra to give blow of 'THAMALI' on the person of Govind Ram, or he caught hold of the injured so that Ram Chandra may give the blow. In the circumstances, particularly, when incidentally Govind Ram happened to be at the place of incident, the act on the part of appellant No. 2 Ghayshyam will have to be seen independently of the act committed by appellant No. 1 Ram Chandra. The injury caused by hitting a stone to Govind Ram by appellant No.2 Ghanshyam, constitutes an offence of voluntarily causing hurt, punishable under Section 323 of I.P.C. Therefore, in the opinion of this Court, conviction and sentence of the appellant No. 2

Ghanshyam under Section 307 / 34 of I.P.C. cannot be maintained.

9) For the reasons as discussed above, the appeal of appellant No. 2 Ghanshyam is partly allowed. His conviction and sentence recorded by the trial court under Section 307 / 34 of I.P.C. is set aside. Instead, he is convicted of the offence punishable under Section 323 of I.P.C. and is sentenced to the period already undergone by him. He is on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged. (Appeal of appellant No. 1 Ram Chandra has already stands abated in view of his death during the period of appeal).

(Prafulla C. Pant, J.)

Dt. October 13, 2006.
H.Negi